

HOUSE BILL No. 1092

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-10-2-12; IC 35-33-8.

Synopsis: Bail procedure. Specifies that a court may require a defendant to execute bail bonds written only by an insurer. Provides that if a defendant is charged with a misdemeanor and is a resident of Indiana, the court may require the defendant to execute a bail bond by depositing cash or securities in an amount not less than 10% of the bail. Provides that if a defendant is charged with a felony or is not a resident of Indiana, the court may require the defendant to: (1) execute a bail bond secured by real estate; or (2) execute a bail bond by depositing cash or securities in an amount not less than 25% of the bail. Requires a defendant admitted to bail to pay a \$20 fee. Requires: (1) 50% of the fee to be deposited in a county's supplemental public defender services fund; and (2) 50% of the fee to be credited to a county jail improvement account in the county general fund. Establishes a procedure for the default of bail bonds and cash and securities used as bail. Provides that certain persons are not eligible to post bail by depositing cash or securities.

Effective: July 1, 2005.

Frizzell

January 6, 2005, read first time and referred to Committee on Courts and Criminal Code.

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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1092

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 27-10-2-12 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. (a) If a defendant
3 does not appear as provided in the bond:

4 (1) the court shall:

5 (A) issue a warrant for the defendant's arrest; and

6 (B) order the bail agent and the surety to surrender the
7 defendant to the court immediately;

8 (2) the clerk shall mail notice of the order to both:

9 (A) the bail agent; and

10 (B) the surety;

11 at each of the addresses indicated in the bonds; and

12 (3) if the defendant later is arrested or otherwise appears:

13 (A) the court shall order that the surety be released from the
14 bond; and

15 (B) after the court issues an order under clause (A), the
16 surety's original undertaking shall be reinstated if the surety
17 files a written request for the reinstatement of the undertaking



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- 1 with the court.
- 2 This subsection may not be construed to prevent a court from revoking
- 3 or resetting bail.
- 4 (b) The bail agent or surety must:
- 5 (1) produce the defendant; or
- 6 (2) prove within three hundred sixty-five (365) days:
- 7 (A) that the appearance of the defendant was prevented:
- 8 (i) by the defendant's illness or death;
- 9 (ii) because the defendant was at the scheduled time of
- 10 appearance or currently is in the custody of the United
- 11 States, a state, or a political subdivision of the United States
- 12 or a state; or
- 13 (iii) because the required notice was not given; and
- 14 (B) the defendant's absence was not with the consent or
- 15 connivance of the sureties.
- 16 (c) If the bail agent or surety does not comply with the terms of
- 17 subsection (b) within one hundred twenty (120) days after the mailing
- 18 of the notice required under subsection (a)(2), a late surrender fee shall
- 19 be assessed against the bail agent or surety as follows:
- 20 (1) If compliance occurs more than one hundred twenty (120)
- 21 days but not more than one hundred eighty (180) days after the
- 22 mailing of notice, the late surrender fee is twenty percent (20%)
- 23 of the face value of the bond.
- 24 (2) If compliance occurs more than one hundred eighty (180) days
- 25 but not more than two hundred ten (210) days after the mailing of
- 26 notice, the late surrender fee is thirty percent (30%) of the face
- 27 value of the bond.
- 28 (3) If compliance occurs more than two hundred ten (210) days
- 29 but not more than two hundred forty (240) days after the mailing
- 30 of notice, the late surrender fee is fifty percent (50%) of the face
- 31 value of the bond.
- 32 (4) If compliance occurs more than two hundred forty (240) days
- 33 but not more than three hundred sixty-five (365) days after the
- 34 mailing of notice, the late surrender fee is eighty percent (80%)
- 35 of the face value of the bond.
- 36 (5) If the bail agent or surety does not comply with the terms of
- 37 subsection (b) within three hundred sixty-five (365) days of the
- 38 mailing of notice required under subsection (a)(2), the late
- 39 surrender fee is eighty percent (80%) of the face value of the
- 40 bond.
- 41 All late surrender fees are due as of the date of compliance with
- 42 subsection (b) or three hundred sixty-five (365) days after the mailing

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of notice required under subsection (a)(2), whichever is earlier, and shall be paid by the surety when due. If the surety fails to pay, then the late surrender fees shall be paid by the commissioner as provided in subsection (f).

(d) If the bail agent or surety does not comply with the terms of subsection (b) within three hundred sixty-five (365) days of the mailing of notice required by subsection (a)(2), the court shall declare ~~forfeited~~ **in default** an amount equal to twenty percent (20%) of the face value of the bond. The court shall immediately enter judgment on the ~~forfeiture, default~~, without pleadings and without change of judge or change of venue, and assess against the bail agent or surety all actual costs resulting from the defendant's failure to appear. These costs include jury fees, witness fees, and any other documented costs incurred by the court.

(e) Proceedings relative to the bond, ~~forfeiture default~~ of a bond, judgment on the ~~forfeiture, default~~, execution of judgment, or stay of proceedings shall be in the court in which the bond was posted. Costs and late surrender fee assessed against a bail agent or surety under subsection (c) shall be satisfied without further order of the court as provided in subsection (f). The court may waive the late surrender fee or extend the period for payment beyond the statutorily permitted period, or both, if the following conditions are met:

- (1) A written request is filed with the court and the prosecutor.
- (2) The surety or bail agent provides evidence satisfactory to the court that diligent efforts were made to locate the defendant.

(f) In the case of an insurer, if the fees, costs, or judgment is not paid, then the clerk shall mail the notice to the commissioner. The commissioner shall:

- (1) within ten (10) days of receipt of the notice forward a copy by certified mail to the insurer;
- (2) forty-five (45) days after receipt of the notice from the clerk, if the commissioner has not been notified by the clerk that the fees or judgment or both have been paid, pay the late surrender fee assessment, costs, and any judgment of ~~forfeiture default~~ ordered by the court from funds the insurer has on deposit with the department of insurance;
- (3) upon paying the assessment, costs, and judgment, if any, from funds on deposit, immediately revoke the license of the insurer, if the satisfaction causes the deposit remaining to be less than the amount required by this article; and
- (4) within ten (10) days after revoking a license, notify the insurer and the insurer's agents and the clerk of each county in Indiana of

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the revocation and the insurer shall be prohibited from conducting a bail bond business in Indiana until the deposit has been replenished.

(g) The notice mailed by the clerk to the commissioner pursuant to the terms of subsection (f) shall include:

- (1) the date on which the defendant originally failed to appear as provided in the bond;
- (2) the date of compliance with subsection (b), if compliance was achieved within three hundred sixty-five (365) days after the mailing of the notice required by subsection (a)(2);
- (3) the amount of the bond;
- (4) the dollar amount of the late surrender fee due;
- (5) the amount of costs resulting from the defendant's failure to appear; and
- (6) if applicable, the dollar amount of the judgment of ~~forfeiture~~ **default** entered by the court.

(h) Any surety on a bond may appeal to the court of appeals as in other civil cases without moving for a new trial, and on the appeal the evidence, if any, shall be reviewed.

(i) Fifty percent (50%) of the late surrender fees collected under this chapter shall be deposited in the police pension trust fund established under IC 36-8-10-12 and the remaining fifty percent (50%) shall be deposited in the county extradition fund established under IC 35-33-14.

SECTION 2. IC 35-33-8-3.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3.2. (a) A court may admit a defendant to bail and impose any of the following conditions to assure the defendant's appearance at any stage of the legal proceedings, or, upon a showing of clear and convincing evidence that the defendant poses a risk of physical danger to another person or the community, to assure the public's physical safety:

- (1) Require the defendant to:
 - (A) execute a bail bond ~~with sufficient solvent sureties,~~ **written by an insurer (as defined in IC 27-10-1-7);**
 - (B) deposit cash or securities in an amount equal to the bail;
 - (C) execute a bond secured by real estate in the county, where thirty-three hundredths (0.33) of the true tax value less encumbrances is at least equal to the amount of the bail; or
 - (D) post a real estate bond.

The defendant must also pay the fee required by subsection (e).

- (2) **In the case of a defendant who is charged with a misdemeanor and who is a resident of Indiana,** require the

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defendant to execute a bail bond by depositing cash or securities with the clerk of the court in an amount not less than ten percent (10%) of the bail. If the defendant is convicted, the court may retain all or a part of the cash or securities to pay fines, costs, fees, and restitution, if ordered by the court. A portion of the deposit, not to exceed ten percent (10%) of the monetary value of the deposit or fifty dollars (\$50), whichever is the lesser amount, may be retained as an administrative fee. The clerk shall also retain from the deposit under this subdivision the following:

(A) Fines, costs, fees, and restitution as ordered by the court.

(B) Publicly paid costs of representation that shall be disposed of in accordance with subsection (b).

(C) In the event of the posting of a real estate bond, the bond shall be used only to ~~insure~~ ensure the presence of the defendant at any stage of the legal proceedings, but shall not be foreclosed for the payment of fines, costs, fees, or restitution.

The defendant must also pay the fee required by subsection (e). The individual posting bail for the defendant or the defendant admitted to bail under this subdivision must be notified by the sheriff, court, or clerk that the defendant's deposit may be ~~forfeited~~ **declared in default** under section 7 of this chapter or retained under subsection ~~(b)~~ (c).

(3) In the case of a defendant who is charged with a felony or who is not a resident of Indiana, require the defendant to:

(A) execute a bond secured by real estate subject to subdivision (1)(C); or

(B) execute a bail bond by depositing cash or securities with the clerk of the court in an amount not less than twenty-five percent (25%) of the bail.

If the defendant is convicted, the court may retain all or a part of the cash or securities to pay fines, costs, fees, and restitution, if ordered by the court. The defendant must also pay the fee required by subsection (e). The individual posting bail for the defendant or the defendant admitted to bail under this subdivision must be notified by the sheriff, court, or clerk that the defendant's deposit may be declared in default under section 7 of this chapter or retained under subsection (c).

~~(3)~~ **(4)** Impose reasonable restrictions on the activities, movements, associations, and residence of the defendant during the period of release.

~~(4)~~ **(5)** Require the defendant to refrain from any direct or indirect

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contact with an individual.

~~(5)~~ (6) Place the defendant under the reasonable supervision of a probation officer or other appropriate public official.

~~(6)~~ (7) Release the defendant into the care of a qualified person or organization responsible for supervising the defendant and assisting the defendant in appearing in court. The supervisor shall maintain reasonable contact with the defendant in order to assist the defendant in making arrangements to appear in court and, where appropriate, shall accompany the defendant to court. The supervisor need not be financially responsible for the defendant.

~~(7)~~ (8) Release the defendant on personal recognizance unless:

(A) the state presents evidence relevant to a risk by the defendant:

(i) of nonappearance; or

(ii) to the physical safety of the public; and

(B) the court finds by a preponderance of the evidence that the risk exists.

~~(8)~~ (9) Impose any other reasonable restrictions designed to assure the defendant's presence in court or the physical safety of another person or the community.

(b) Subsection (a)(2) and (a)(3) do not apply to a defendant who:

(1) is currently released from custody from any jurisdiction on any charge;

(2) has failed to appear in court in any jurisdiction within the preceding five (5) years;

(3) has been convicted of a felony in any jurisdiction within the preceding five (5) years; or

(4) is charged with a crime of violence (as defined in IC 35-50-1-2).

~~(b)~~ (c) Within thirty (30) days after disposition of the charges against the defendant, the court that admitted the defendant to bail shall order the clerk to remit the amount of the deposit remaining under subsection (a)(2) or (a)(3) to the defendant. The portion of the deposit that is not remitted to the defendant shall be deposited by the clerk in the supplemental public defender services fund established under IC 33-40-3.

~~(c)~~ (d) For purposes of subsection ~~(b)~~; (c), "disposition" occurs when:

(1) the indictment or information is dismissed; or

(2) the defendant is acquitted or convicted of the charges.

(e) Except as provided in subsection (f), the clerk of the court shall collect a fee of twenty dollars (\$20) for each bond or deposit

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under subsection (a)(1), (a)(2), and (a)(3). The clerk of the court shall semiannually remit the fees as follows:

(1) Fifty percent (50%) of the fees shall be deposited in the supplemental public defender services fund established under IC 33-40-3 in the county in which the court is located.

(2) Fifty percent (50%) of the fees shall be:

(A) deposited in the county general fund of the county in which the court is located; and

(B) credited to a separate account identified as the county jail improvement account.

A county may expend funds credited to a county jail improvement account, without appropriation, only for the operation, construction, repair, remodeling, and enlarging of a county jail.

~~(d)~~ (f) With the approval of the clerk of the court, the county sheriff may collect the bail posted under this section **and the fees required under subsection (e).** The county sheriff shall remit:

(1) the bail to the clerk of the court by the following business day; and

(2) the fees to the clerk of the court one (1) time each month.

~~(e)~~ (g) When a court imposes a condition of bail described in subsection ~~(a)(4)~~: **(a)(5)**:

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

SECTION 3. IC 35-33-8-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) If a defendant:

(1) was admitted to bail under section 3.2(a)(2) **or 3.2(a)(3)** of this chapter; and

(2) has failed to appear before the court as ordered;

the court shall issue a warrant for the defendant's arrest **and, except as provided in subsection (b), declare the cash or securities deposited and the remainder of the bail in default. Judgment on the cash or securities and the remainder of the bail shall be ordered by the court and entered by the clerk not sooner than one hundred twenty (120) days after the date the defendant fails to appear if the defendant does not appear during the one hundred twenty (120) day period. The clerk shall provide notice of the judgment to the defendant and other depositors of the cash or securities by mail not later than forty-five (45) days after judgment is entered by the court.**

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(b) In a criminal case, if the court having jurisdiction over the criminal case receives written notice of a pending civil action or an unsatisfied judgment against the criminal defendant arising out of the same transaction or occurrence forming the basis of the criminal case, ~~funds~~ **cash or securities** deposited with the clerk of the court under section 3.2(a)(2) or 3.2(a)(3) of this chapter **and the remainder of the collected or uncollected bail amount** may not be declared ~~forfeited in default~~ by the court, and the court shall order the **cash or securities** deposited ~~funds~~ **and the remaining amount of the bail** to be held by the clerk. If there is an entry of final judgment in favor of the plaintiff in the civil action, and if the ~~deposit~~ **cash or securities deposited** and the ~~bond~~ **remaining amount of the bail** are subject to ~~forfeiture, default,~~ the criminal court shall order payment of all or any part of the ~~deposit~~ **cash or securities deposited and the remaining amount of the bail** to the plaintiff in the action, as is necessary to satisfy the judgment. The court shall then order **a judgment on** the remainder of the ~~deposit,~~ **cash or securities deposited**, if any, and the ~~bond~~ **remaining amount of the bail.** ~~forfeited.~~

(c) Any proceedings concerning the ~~bond,~~ **bail** or its ~~forfeiture, default,~~ judgment, or execution of judgment, shall be held in the court that admitted the defendant to bail.

(d) Notwithstanding subsections (a) and (b), if, after a ~~bond~~ **has the cash or securities deposited and the remaining amount of the bail** have been ~~forfeited~~ **declared in default and judgment entered** under subsection (a) or (b), the clerk shall mail notice of forfeiture to the defendant. ~~In addition,~~ unless the court finds that there was justification for the defendant's failure to appear **within the one hundred twenty (120) day period under subsection (a),** the court shall immediately enter ~~may vacate the judgment without pleadings and without change of judge or change of venue,~~ against the defendant **or any other depositor or guarantor** for the amount of the bail **after the one hundred twenty (120) day period expires.** ~~bond,~~ and the clerk shall record the judgment.

(e) If a ~~bond~~ **is forfeited the cash or securities deposited and the remaining amount of the bail** are declared in default and the court has entered a judgment under subsection (d), the clerk shall transfer to the ~~state common school county general~~ **fund:**

- (1) any amount remaining on deposit with the court (less the **administrative** fees retained by the clerk); and
- (2) any amount **of the remaining bail amount** collected in satisfaction of the judgment (**less attorney's fees and collection costs retained by the clerk**).

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(f) The clerk shall return a deposit, less the administrative fee, made under section 3.2(a)(2) or **3.2(a)(3)** of this chapter to the defendant, if the defendant appeared at trial and the other critical stages of the legal proceedings.

SECTION 4. IC 35-33-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) If a defendant was admitted to bail under section ~~3.2(a)~~ **3.2(a)(1)** of this chapter and the defendant has ~~knowingly and intentionally~~ failed to appear before the court as ordered, the court ~~(+)~~ shall issue a warrant for the defendant's arrest **and, except as provided in subsection (b), declare the bail in default. If the defendant was admitted to bail under section 3.2(a)(1)(B) or 3.2(a)(1)(C) of this chapter, judgment on the bail may be withheld for one hundred twenty (120) days. If the defendant was admitted to bail under section 3.2(a)(1)(A) of this chapter, judgment must be in accordance with IC 27-10-2-12. If the bail has been declared in default and judgment has been entered under subsection (c), the court:**

~~(2)~~ **(1)** may not release the defendant on personal recognizance; and

~~(3)~~ **(2)** may not set bail for the rearrest of the defendant on the warrant at an amount that is less than the greater of:

(A) the amount of the original bail; or

(B) two thousand five hundred dollars (\$2,500);

in the form of a bond issued by an entity defined in IC 27-10-1-7 or the full amount of the ~~bond~~ **bail** in cash.

(b) In a criminal case, if the court having jurisdiction over the criminal case receives written notice of a pending civil action or **an** unsatisfied judgment against the criminal defendant arising out of the same transaction or occurrence forming the basis of the criminal case, funds deposited with the clerk of the court under section **3.2(a)(1)(B), 3.2(a)(2), or 3.2(a)(3)** of this chapter may not be declared ~~forfeited in default~~ by the court, and the court shall order the deposited funds to be held by the clerk. If there is an entry of final judgment in favor of the plaintiff in the civil action, and if the deposit is subject to ~~forfeiture, default,~~ the criminal court shall order payment of all or any part of the deposit to the plaintiff in the action, as is necessary to satisfy the judgment. The court shall then order **a judgment in favor of the county on** the remainder of the deposit, if any. ~~forfeited.~~

(c) **After a bond has been declared in default under subsection (a) or defaulted under subsection (b), the clerk shall mail notice of the default to the defendant. In addition, unless the court finds that there was justification for the defendant's failure to appear within**

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1 the one hundred twenty (120) day period after the date the notice
 2 was mailed, the court shall enter judgment and mail notice after
 3 the one hundred twenty (120) day period expires, without pleadings
 4 and without change of the judge or change of venue, against the
 5 defendant for the amount of the bail, and the clerk shall record the
 6 judgment.

7 (d) If a bond is declared in default and the court has entered
 8 judgment under subsection (c), the clerk shall transfer to the
 9 county general fund any amount:

10 (1) remaining on deposit with the court; and

11 (2) collected in satisfaction of the judgment (less attorney's
 12 fees and collection costs retained by the clerk).

13 (e) If a defendant appeared at trial and other critical stages of
 14 the legal proceedings, the court shall order the clerk to:

15 (1) return any deposit made; or

16 (2) release any real estate used to secure the defendant's bail;
 17 under section 3.2(a)(1) of this chapter to the defendant or another
 18 person, if another person made the deposit or owns the real estate,
 19 not more than forty-five (45) days after the date of the disposition
 20 of the charges against the defendant.

21 SECTION 5. [EFFECTIVE JULY 1, 2005] IC 35-33-8-7 and
 22 IC 35-33-8-8, both as amended by this act, apply only to a
 23 defendant admitted to bail after June 30, 2005.

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